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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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In re A.V. et al., Persons Coming Under the Juvenile  
Court Law.

C087655

SACRAMENTO COUNTY DEPARTMENT OF  
CHILD, FAMILY AND ADULT SERVICES,

(Super. Ct. Nos. JD238024,  
JD238546)

Plaintiff and Respondent,

v.

A.U.,

Defendant and Appellant.

A.U., mother of minors A.V. and K.C., appeals from the juvenile court's dispositional orders removing the minors from her home. (Welf. & Inst. Code, §§ 358, 361, 395.)<sup>1</sup> Mother contends there was insufficient evidence for the juvenile court to find

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

the Sacramento County Department of Child, Family and Adult Services (Department) made reasonable efforts to avoid removal prior to disposition. She adds the Department failed to comply with the inquiry and notice provisions of the Indian Child Welfare Act (ICWA) (25 U.S.C. 1901 et. seq.). Disagreeing, we affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

Mother and C.C. (father of the younger minor K.C. [hereafter father]) began dating around March 2015 and have had repeated issues with domestic violence throughout their relationship history. Some of the incidents involved physical violence and had occurred in the presence of mother's older son, minor A.V. (born in 2006). In 2016 mother moved from Los Angeles to Sacramento in an attempt to get away from father and the violence. But she allowed him to move back in with her and by January 2017 the domestic violence had resumed. Additional domestic violence incidents occurred on February 21, March 8, and March 13, 2017.

A section 300 petition was filed on March 17, 2017, on behalf of A.V. (K.C. was not yet born), alleging domestic violence, failure to protect, and inability to provide suitable care. A.V. was ordered detained on March 21, 2017.

On March 27, 2017, mother filed a request for a temporary restraining order against father, which was extended to May 2, 2017, at which time the juvenile court ordered no contact between father and A.V. On May 16, 2017, the juvenile court ordered that father not be in mother's home. On May 30, 2017, mother's counsel filed another request for a restraining order against father; however, mother withdrew it on June 17, 2017.

A.V.'s combined jurisdiction/disposition hearing took place on July 11, 2017. The Department recommended that A.V. remain in mother's home with family maintenance services. It requested the no-contact order between father and A.V. remain in effect and that mother file a restraining order against father to protect herself and A.V. The juvenile court sustained the petition, adjudicated A.V. a dependent child of the court, and ordered

A.V. to remain in mother's care under dependent supervision. It entered a no-contact order prohibiting father having contact with A.V. but did not require mother to obtain a restraining order. Mother's family maintenance services included counseling to address the issues of oppositional behavior, domestic violence, codependency, and any other issues deemed appropriate by the therapist.

Minor K.C. was born in July. Father came to visit at the hospital and he and mother argued. Both mother and hospital staff indicated that they suspected father was under the influence of an intoxicant of some sort.

On August 16, 2017, law enforcement responded to multiple calls concerning domestic violence between father and mother at her apartment, and arrested father. On September 11, 2017, A.V. reported that father was living with mother and hiding in the closet or backyard when the social worker visited.

On September 28, 2017, A.V. heard mother and father engaged in domestic violence, including punching, cursing, yelling, kicking, hitting and banging into walls.

On October 2, 2017, the social worker went to mother's residence and saw mother outside with father. Although mother denied it, A.V. reaffirmed twice in October that father was currently living in the home and had been for a long time, but that A.V. was "not supposed to tell anyone." Near the end of October, the Department filed a section 387 supplemental petition for removal of A.V. and an original section 300 petition for jurisdiction over K.C., also seeking removal. The minors were detained and interim services ordered. The services recommended for mother included individual counseling, a domestic violence program, parenting education, and a codependency program. The juvenile court ordered visitation with A.V. for mother, but no contact between father and A.V. Mother and father were provided separate visitation with K.C.

On February 20, 2018, a concern was raised that the parents had been visiting together. Father acknowledged this and asked that the parents be able to visit together, but the juvenile court confirmed that the visits must be separate.

In March 2018 the Department reported that father had been dropping mother off for her visits with the minors, but had repeatedly declined services. Mother had been participating in services and had completed a 12-week domestic violence program on November 14, 2017.<sup>2</sup>

Mother also completed 10 individual counseling sessions, but the identified goals were not met. Her therapist reported that she continued to place blame on A.V. and his disclosures rather than father's actions. The therapist also indicated that mother was "still exhibiting codependent behaviors and is still under the control of her significant other." Mother had told the therapist that she and father were still " 'enmeshed.' " The therapist assessed that "[s]tatements like this . . . provide clear examples that the significant other does seem to be continuing to exhibit external control." The therapist further assessed that the domestic violence would likely continue, if it had not already, and that she had not witnessed mother "demonstrate an ability to self advocate, hold self respect, and participate in realistic goals that will keep her and her children safe in the future." As a result, the therapist recommended mother participate in additional services, including completing a codependency anonymous support group, and individual counseling to address issues related to self-esteem, codependency, realistic goal-setting, and interpersonal skill building. Additional therapy sessions also were recommended to complete the counseling goals.

Mother completed a second series of counseling on April 21, 2018. She made progress, but her new therapist had concerns due to her continued blaming of others, which indicated she may not be fully ready to apply learned concepts to her life and that "the chances of the past repeating itself is high which will undoubtedly cause detrimental impact on the children." Continued counseling was recommended.

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<sup>2</sup> This timeline showed that she and father had been involved in their October 3, 2017 domestic violence incident during the second half of the program.

Father was arrested for driving under the influence on April 7, 2018 and again on April 12, 2018.

The combined jurisdiction/disposition hearing was held on June 21, 2018. By the time of the hearing, mother had completed her parenting class. She indicated that she had just moved from a WEAVE shelter into her own residence and requested placement of the minors with a safety plan or, alternatively, overnight visits. The Department represented it had not been given mother's new address and was concerned that mother was still dependent on father. The Department requested mother be ordered to participate in denial management services and emphasized that she still was relying on father for transportation, including to visits with the minors.

During argument and in the presence of A.V., mother interrupted the court, stating: "If you want my kids, just take them. Just take them. I don't care. Just go. That's what you want, you want to take my kids, then just take them. Shit." Mother then left the courtroom with father. When they returned to the courtroom, the juvenile court told mother "that when you have an outburst of that nature, it appears to be emotionally damaging to your son. And I would urge you to keep that in mind. I understand what we are talking about is sensitive to you. It obviously is sensitive to him as well." While addressing the case plan components, mother muttered under her breath "This is ridiculous." At one point, the court had to admonish father to take his hands off mother and noted for the record that he had just placed his hands over mother's mouth to prevent her from speaking.

The juvenile court adjudged the minors dependents, ordered them removed from parental custody, and ordered reunification services including denial management therapy for mother.

## DISCUSSION

### I

#### *Reasonable Efforts to Avoid Removal*

Mother first contends insufficient evidence supports the juvenile court's dispositional order removing the minors from her custody because the Department failed to make reasonable efforts to avoid removal. She contends she successfully completed all of her services and the minors were improperly removed because she was having permissible and peaceable contact with father. We find no error.

To support an order removing a child from parental custody, the court must find clear and convincing evidence “[t]here is or would be a substantial danger to the physical health, safety, protection or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s . . . physical custody.” (§ 361, subd. (c)(1); see *In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) The court also must “make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor” and “state the facts on which the decision to remove the minor is based.” (§ 361, subd. (e).) Removal findings are reviewed under the substantial evidence test, drawing all reasonable inferences to support the findings and noting that issues of credibility are matters for the trial court. (*In re Heather A.*, at p. 193.)

Ample evidence under consideration at the disposition hearing supports the juvenile court's order for continued removal of the minors. The court heard evidence that mother had a history of engaging in domestic violence with father in front of her children and flouting the court's order to keep father away from A.V. Mother acknowledged she and father were “enmeshed,” and she continued to rely on father rather than the bus passes provided to her for rides to visits, despite her extensive participation in services including a 12-week domestic violence program and 20 individual therapy sessions. The

parents continued to engage in domestic violence during and after much of mother's participation in services, demonstrating mother's continued inability or unwillingness to apply what she had purportedly learned. Even in court and defending a record of domestic violence, father placed his hands over mother's mouth while she was speaking.

Mother argues that she completed the recommended services and that the sole reason the minors were not returned was based on her permissible contact with father. She argues she was "led [] to believe" the contact would not interfere with her perceived progress. However, it was not mother's "continuing peaceful contact" with father that demonstrated the risk to the minors remained. It was mother's failure to make sufficient progress in the services to assure the safety of the minors by showing her physical and emotional separation from the man who repeatedly attacked her in front of her children and then refused to participate in services to reunite with his baby son. Both then flouted court orders put in place primarily for the minors' safety. Mother points to nothing that weighed against the evidence before the court from mother's second therapist that "the chances of the past repeating itself is high which will undoubtedly cause detrimental impact on the children." Thus, while mother did participate in services, and even completed some, she failed to make the progress necessary to avoid the need to remove the minors from her home.

Mother suggests the minors could have been returned with supervision, such as "unannounced visits by the Department or in-home services to ensure that [father] does not have contact with the children and mother." It is difficult to discern how supervision by the Department or any other alternative to removal would have been successful in assisting mother to maintain a safe home for the minors. A.V. was with mother for six months before the disposition hearing, and father surreptitiously lived with the family despite the issuance of a no-contact order between father and A.V. There were multiple incidents of domestic violence, including in the hospital after K.C. was born, during that time period. Mother in no way demonstrated that she could provide a safe, domestic

violence-free home for the minors. Nor, as we have noted, did mother demonstrate that she would abide by court orders entered to protect the minor. Substantial evidence supports the finding by the juvenile court that the Department made reasonable efforts to prevent the minors' removal.

## II

### *ICWA Inquiry and Notice*

Mother next claims ICWA notice was lacking information on A.V.'s adjudicated fathers, D.E. and B.D.

A paternity judgment was entered in November 2012, naming D.E. the father of minor A.V. However, paternity testing ruled him out as the minor's *biological* father. Another judgment was entered in September 2013, naming B.D. as A.V.'s father. Despite due diligence, the Department was unable to locate B.D. At the time of the March 2017 detention hearing and thereafter, mother named "Tony" as the A.V.'s biological father. Two individuals named "Tony" appeared in court and were excluded as A.V.'s biological father.

Because mother claimed possible Indian ancestry on her ICWA-030 form, the Department sent ICWA notice to several tribes. The ICWA notice provided the names of the three alleged fathers for A.V., all named Tony. Mother argues the Department failed to comply with the ICWA inquiry and notice requirements because it did not include D.E. and B.D. as A.V.'s father, did not send the ICWA notice to these two men, and did not inquire of these two men whether they had Indian heritage or provide their ancestry information on the ICWA form.

Mother did not appeal from the juvenile court's orders finding compliance with the ICWA and finding that A.V. is not an Indian child. " 'It is elementary that an appeal from a portion of a judgment brings up for review only that portion designated in the notice of appeal.' " (*Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 625.)



While the rules of court require liberal construction of a notice of appeal, the notice must identify the judgment or order appealed from. (Cal. Rules of Court, rule 8.100(a)(2).)

Mother's notice of appeal was filed on July 23, 2018, and stated the appeal was from the June 21, 2018 "jurisdictional and dispositional findings and orders." The ICWA compliance hearing was held on June 28, 2018, before mother specifically designated the June 21 hearing on the notice of appeal. The ICWA orders were independently appealable. (§ 395.) Construing a notice of appeal that expressly identifies a particular hearing and order by both date and name to also include another different and independently appealable hearing held on a later date would stretch the rule of liberal construction too far.

ICWA compliance is an ongoing obligation. (*R.R. v. Superior Court* (2009) 180 Cal.App.4th 185, 199.) That said, we fail to see any prejudice in these alleged errors, as D.E. is excluded as the minor's biological father and B.D. cannot be located. (See *In re C.A.* (2018) 24 Cal.App.5th 511, 519-520 [ICWA notice not required for even a presumed father who was not biological or adoptive father].) However, because the issue is not properly before us, any concerns with continued ICWA compliance should be addressed with the juvenile court.

DISPOSITION

The orders of the juvenile court are affirmed.

                  /s/                    
Duarte, J.

We concur:

                  /s/                    
Hull, Acting P. J.

                  /s/                    
Butz, J.